

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, OCTOBER 15, 2003**

**C-1     CALL TO ORDER / ROLL CALL**

The City Council Closed Session meeting of October 15, 2003, was called to order by Mayor Hitchcock at 5:04 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: Deputy City Manager Keeter, City Attorney Hays, and City Clerk Blackston

**C-2     ANNOUNCEMENT OF CLOSED SESSION**

- a) Threatened litigation: Government Code §54956.9(b)(3)(E); statement made to City Manager threatening relationship between the City and the Booster of Boys and Girls Sports (BOBS) (CA)

Mayor Hitchcock reported that an e-mail communication was received by Council from Mr. and Mrs. Bernasconi indicating that there had not been any threat of litigation made, other than suggesting that the matter be taken to the Grand Jury or the Attorney General's Office for an opinion.

City Attorney Hays reported that the City Manager had indicated he felt there was a threat of litigation. Deputy City Attorney Schwabauer received a phone call from the District Attorney's Office who reported that Mr. Bernasconi had submitted information to their office, and based on that call, Mr. Schwabauer believed that Mr. Bernasconi was asking the District Attorney to prosecute the City. Mr. Hays explained that whether or not a threat of litigation is made by a person willing to undertake it themselves, or that they are going to generate that circumstance through others, does not diminish the fact that it constitutes a threat of litigation. He stated that it is clear that litigation is a possibility in this situation and Mr. Bernasconi's activity constitutes a threat under the statute.

**PUBLIC COMMENTS:**

- Ron Bernasconi pointed out that his contact with the District Attorney was copied to the Council on May 16. He believed that the Brown Act was being violated by the Boosters of Boys and Girls Sports (BOBS) and stated that the City played a role in the creation of the BOBS and it delegated authority to run Lodi youth sports programs to the BOBS. Mr. Bernasconi stated that they have been engaging in closed session meetings in a garage to terminate a board member. He asserted that agenda item C-2 (a) is improperly agendaized and is in violation of the Brown Act because it states that it is based on a statement made to the City Manager, not the District Attorney. He stated that no threat of litigation was made to the City Manager when he met with him and a declaration from Eileen St. Yves, a witness to the conversation, would corroborate this. He stated that the agreement between the City and the BOBS stipulates that the Parks and Recreation Director has the authority to assign and direct members of the BOBS, which includes the Board of Directors and Mr. Bernasconi met with the BOBS founder, Ed DeBenedetti, who verified this. The agreement also indicates that the City must indemnify the board members and officers up to \$250,000 each. He believed it was irresponsible to maintain a position that the City has no authority, jurisdiction, or control, when it has liability. He contended that if the City has no jurisdiction or control, then there is an improper delegation of public authority. There are five City employees on the BOBS Board, four of which are under the direction of the Parks and Recreation Director, and one of these individuals serves as the Secretary, who he alleged is falsifying the BOBS minutes. He recommended that the City redirect and reassign while it investigates this matter. The BOBS advisor knowingly allowed a parent's rights to be violated. He emphasized that there is no line of authority, control, checks and balances, or accountability. Because of the misbehavior that was engaged in, four BOBS Board Members resigned in protest and one resigned after conviction of embezzlement. He recalled that the City Manager had scheduled this matter for a

Shirtsleeve Session; however, the Parks and Recreation Director had it removed. Mr. Bernasconi pointed out that Parks and Recreation Director Goehring was a former member of the BOBS.

Mr. Bernasconi stated that there has been a narrow argument made that the Public Resources Code does not apply because board members do not have supervisory disciplinary authority over minors at public schools, parks, and recreational facilities. He distributed a declaration signed by seven current and former BOBS board members who believed that based on: 1) the BOBS bylaws, 2) agreement with the City, and 3) their experience, that they have, or have had, supervisory and/or disciplinary authority over minors on City operated parks, playgrounds, or recreational centers (filed). He challenged the argument that BOBS is a separate legal entity and therefore the City has no jurisdiction or control, pointing out that it is illogical for the City to have all the liability with no ability to select members or apply standards, yet it must indemnify them. Subsequent to a 2001 audit conducted by the Department of Justice, the City Attorney told the current BOBS president to cease his authority over minors on public schools, parks, and recreational facilities. Mr. Bernasconi stated that this individual disobeyed that directive. The BOBS minutes evidence the complicity of three separate board members in the knowing violation of state law. A letter sent to a BOBS director admits that he coached.

Mr. Bernasconi stated that in January 2003 he had been informed by the City Manager that the City would establish whether or not there was a problem. He noted that this has not yet occurred and asked that it be pursued. Since April, Mr. Bernasconi has recommended that the City seek an Attorney General's opinion. He explained that the Public Resources Code was eviscerated last year through a legislative mistake that removed the references to disqualifying offenses. He understood that the City Attorney intends to offer a resolution to enact standards, which would be comparable to what the Public Resources Code applies for.

Mr. Bernasconi believed that had there been timely implementation of the law, as outlined in the August 2001 memorandum from the Human Resources Director, his wife would not have been threatened, his child would not have been retaliated against, four BOBS members would not have resigned, and the Brown Act would not have been violated.

Mayor Pro Tempore Howard recalled that over the past several months Mr. Bernasconi has sent correspondence to the City Council expressing his opinion that there is a link between the City and the BOBS organization, and because of that, the City has disobeyed laws and is engaging in "slow creeping corruption." She believed that Mr. Bernasconi's approach in contacting police officers, senators, the Attorney General, etc. constitutes a threat of litigation, as was previously iterated by the City Attorney.

Mr. Bernasconi countered that the act of calling a police officer is not synonymous with filing a lawsuit. He stated that the real liability comes from deliberate indifference, i.e. ignoring clear violations of law when there is a duty of oversight.

Council Member Land suggested that the topic of the BOBS organization be scheduled for discussion at an open special meeting.

Deputy City Manager Keeter explained that City Manager Flynn was absent today due to undergoing medical procedures in preparation for surgery.

Mr. Bernasconi replied that it would not be possible to talk about the statement made to the City Manager in his absence.

Mr. Hays recalled that eight years ago he recommended that the contractual relationship between the City and BOBS be adjusted; however, it was very poorly received and he was told not to pursue it.

In response to Council Member Hansen, Mr. Bernasconi reported that he met with Mr. DeBenedetti on two occasions and he confirmed that the City played a role in the creation of the BOBS and delegated authority to them to run youth sports programs. Mr. Bernasconi asked him to sign an affidavit to that effect; however, Mr. DeBenedetti declined to do so.

- b) Authorization to negotiate building lease for 300 West Pine Street (APN 037-280-33); negotiating parties are Russell and Kathryn Munson (Government Code §54956.8)
- c) Conference with Labor Negotiator, Human Resources Director Joanne Narloch, regarding Association of Lodi City Employees, concerning General Services and Maintenance and Operators, and Confidential Unrepresented Employees pursuant to Government Code §54957.6

C-3 ADJOURN TO CLOSED SESSION

At 5:52 p.m., Mayor Hitchcock adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:50 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:00 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Hays disclosed the following actions.

In regard to Item C-2 (a), no reportable action was taken in closed session.

Item C-2 (b) was not discussed.

In regard to Item C-2 (c), no reportable action was taken in closed session.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of October 15, 2003, was called to order by Mayor Hitchcock at 7:00 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: Deputy City Manager Keeter, City Attorney Hays, and City Clerk Blackston

B. INVOCATION

The invocation was given by Reverend Kevin Suess, Lodi Community Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 (a) Debbie Olson, Regional Representative with the League of California Cities, made a presentation to Council Member Hansen for his recent graduation from the Mayors' and Council Members' Institute.

D-2 Proclamations – None

D-3 (a) Joey Nardinelli and Elisa Villarreal, members of the Greater Lodi Area Youth Commission, acknowledged the Teen of the Month, Katie Baumgarten from St. Mary's High School, and provided an update on the activities and accomplishments of the Commission.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Beckman second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

- E-1 Claims were approved in the amount of \$6,288,618.66.
- E-2 The minutes of September 17, 2003 (Regular Meeting), September 30, 2003 (Shirtsleeve Session), and October 1, 2003 (Regular Meeting) were approved as written.
- E-3 Approved the request for proposals and authorized advertisement for bids for security services for the Lodi Station, Lodi Station Parking Structure, and Hutchins Street Square.
- E-4 Adopted Resolution No. 2003-187 rejecting all bids for Equipment Purchase for the Lodi Unified School District Compressed Natural Gas Fueling Station.
- E-5 Adopted Resolution No. 2003-188 rejecting all bids for Construction of the Lodi Unified School District Compressed Natural Gas Fueling Station.
- E-6 Adopted Resolution No. 2003-189 awarding contract for Alley South of Pine Street Wastewater Main Rehabilitation Project (Church Street to Hutchins Street) to Pacific Liners, of Vacaville, in the amount of \$96,060.10, and appropriated \$110,000 for the project in accordance with staff recommendation.
- E-7 Accepted the improvements under the "Type II Polymer Modified Slurry Seal, Various City Streets, 2003" contract.
- E-8 Accepted the improvements under the "Salas and Legion Playground Improvement Project, 2001 S. Stockton Street and 835 S. Hutchins Street" contract.
- E-9 Accepted the improvements under the "Lodi Lake Handicap Accessible Bicycle/Pedestrian Corridor Project – Phase II, 1101 W. Turner Road" contract.
- E-10 Approved the Improvement Agreement for the public improvements for 1349 East Kettleman Lane, directed the City Manager and City Clerk to execute the agreement on behalf of the City, and appropriated funds in the amount of \$261,500 for the required reimbursements.  
  
Mayor Pro Tempore Howard noted that a blue sheet was distributed to Council regarding Item E-10 correcting the address to **1333** East Kettleman Lane (filed).
- E-11 Adopted Resolution No. 2003-190 authorizing the City Manager to execute the lease agreement with Sacramento-Valley Limited Partnership, dba Verizon Wireless, for 1145 S. Ham Lane (Municipal Service Center) for the purpose of installing communication equipment on City property and co-locating its antennas on the existing AT&T tower at that location.
- E-12 Adopted Resolution No. 2003-191 authorizing the City Manager to execute a contract with the San Joaquin Valley Unified Air Pollution Control District and a cooperative agreement with the San Joaquin Council of Governments for grant funding to construct a park and ride lot located at 200 N. Beckman Road.
- E-13 Adopted Resolution No. 2003-192 approving the reclassification of one Administrative Clerk to Senior Administrative Clerk located in Public Works – Fleets and Facilities Division.

- E-14 Adopted Resolution No. 2003-193 approving the reallocation of one Administrative Clerk to Permit Technician (vacant position) located in Community Development along with the new job specification and salary range.
- E-15 "Adopt resolution approving \$50,000 loan to the Lodi Redevelopment Agency in order to fund the first of five annual payments to the Salvation Army for the development of the Hope Harbor project" was **removed from the Consent Calendar for discussion under the Regular Calendar.**
- E-16 Adopted Resolution of Intention No. 2003-194 to vacate Neuharth Drive and the south 300 feet of Ackerman Drive; referred the matter to the Planning Commission; and set a public hearing for November 5, 2003.
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F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider a resolution adopting Engineer's Report, confirming the assessments, overruling protests, and declaring assessment ballot results and establishing Almondwood Estates Assessment District Zone 1 Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1.

City Engineer Wally Sandelin reported that a Shirtsleeve Session had been held to discuss this topic, as well as a public meeting on October 1. Staff now recommends that Council take concluding action to form the assessment district.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

City Clerk Blackston reported that she received the assessment ballots cast in the special assessment mailed ballot procedure as called by Council in its resolution 2003-154 adopted on August 20. She declared the balloting closed and certified the results of the tabulation as follows:

Total assessment ballots cast YES	\$29,822
Total assessment ballots cast NO	Zero

She explained that the assessment ballots were weighted according to the proportional financial obligation the affected property has to the total assessment amount. The assessment ballots cast "yes" equal 100% of the total assessment ballots cast.

MOTION / VOTE:

The City Council, on motion of Council Member Beckman, Hansen second, unanimously adopted Resolution No. 2003-195 adopting Engineer's Report, confirming the assessments, overruling protests and declaring assessment ballot results and establishing assessment maintenance district—Almondwood Estates Assessment District Zone 1 Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1 (Landscaping and Lighting Act of 1972).

H. COMMUNICATIONS

- H-1 Claims filed against the City of Lodi – None
- H-2 Reports: Boards/Commissions/Task Forces/Committees – None
- H-3 Appointments – None
- H-4 Miscellaneous – None

I. REGULAR CALENDAR

I-1 “State Budget update”

Deputy City Manager Keeter reported that Governor Elect Schwarzenegger has made comments about reducing the Vehicle License Fee (VLF). Senator John Burton indicated during a press conference that if the new governor proposes to restore the VLF tax cut the legislature would not be willing to backfill to local governments.

MOTION/ VOTE:

There was no Council action necessary on this matter.

I-2 “Discussion regarding Kristmont Acres lighting and sidewalk issues”

Deputy City Manager Keeter noted that at the October 1 meeting Council directed staff to schedule this matter on the agenda for discussion.

Electric Utility Director Vallow recalled that prior to the current street lighting program residents were being charged to have streetlights installed. He stated that the Utility has no intention, in an area that was designed to be rural, to force streetlights on the residents. He reported that 75% of the people with sidewalks in the Kristmont Acres area have granted easements for streetlights. In the areas without sidewalks, approximately 15% have easements.

Al Smatsky, Senior Electrical Estimator, reported that staff made contact with the residents of Kristmont Acres where the streetlights were going to be placed, and they had either signed an easement agreement or agreed to sign an agreement.

In reply to Mayor Hitchcock, Mr. Vallow recommended that staff determine what the residents want in each of the two areas and report back to Council.

In answer to Council Member Hansen, Mr. Smatsky stated that the areas that have indicated they want streetlights are Del Mont Street, La Setta Drive, and part of Cabrillo Circle. Wood Drive would be an infill, as some lights have already been installed there. Mr. Vallow stated that the areas that would be excluded are Cabrillo Circle, La Vida Drive, Kristmont Street, and Bella Vista Drive.

In response to Council Member Beckman, City Attorney Hays explained that the deferral agreement program is one that has been used throughout the City for various development activities. Deferral agreements allow people to forestall the installation of improvements that they are otherwise bound to do under regulations that the City has in place.

Council Member Beckman expressed concern about the language in section two, i.e. “Owner further agrees that at such time as the property described above is included in a proposed Street Light District petition, at the City’s request, Owner shall support and join in such petition and hereby waives objection to the creation of such Street Light District.” He believed this language creates a chilling effect among the homeowner’s right to address the City Council.

Mr. Hays replied that the language is "surplus" because the City no longer has a Street Light District program.

Mayor Hitchcock commented that she read another agreement that stated an individual would not sign a petition or object to the installation of sidewalks or streetlights.

Public Works Director Prima explained that there is an ordinance which requires that all the offsite public improvements be installed when improvements are made on the property that exceed a certain value. The deferral agreement language regarding the objection to streetlights had to do with districts that were used to fund the installations in the past.

Mayor Pro Tempore Howard recommended that Council introduce a resolution to exempt properties in Kristmont Acres from streetlight and sidewalk installation unless specially requested by a property owner and approved by the Council.

Mr. Vallow suggested that the resolution stipulate that a request be made by two-thirds of the owners of a street, rather than a single property owner.

Council Member Beckman voiced concern about the fact that the deferral agreement runs with the land so that subsequent buyers of the property are also held to the agreement.

Mr. Hays advised Council that the deferral agreement program works well for cities throughout the state and cautioned against consideration of eliminating it, due to possible negative ramifications in the future.

PUBLIC COMMENTS:

- Mary Jane Ballatore stated that over 50% of the people in Kristmont Acres have signed a petition against street lighting, as they enjoy the rural-type atmosphere. Ms. Ballatore stated that she had been a resident of Kristmont Acres for 41 years and there have never been any problems in the neighborhood.
- Nancy Ehlers stated that she has lived on Kristmont Street for 40 years. She was opposed to streetlights and sidewalks being installed in the area. She stated that the neighborhood is safe and there is little traffic. She was very upset about the language in the deferral agreements that some residents had to sign in order to get building permits and felt as though it was an underhanded way for the City to push something through that is not desired by the property owners.
- Wade Broughton stated that he had to wait 15 years for a home to become available in Kristmont Acres. It is a desirable area and the residents prefer that it remain unchanged.
- Steven LaViola reported that his neighbor was forced to sign a waiver stating that he would not sign a petition in opposition to sidewalks and streetlights in order to obtain a swimming pool permit. He expressed concern that anyone wanting to make home improvements would have to sign a waiver and eventually the City would have all the residents of Kristmont Acres under these agreements and no one would be able to oppose the sidewalks and streetlights.

Mr. Hays explained that if the individuals had not signed the improvement deferral agreements they would have had to put in the improvements at the time they did the work on their homes according to the City's ordinance. Currently if home owners do home improvements worth \$32,400 or more the ordinance requires that curb, gutter, and sidewalk be put in.

Council Member Beckman clarified that his objection was not related to deferring the improvements. He objected to preventing home owners from petitioning against a

lighting district. He believed that items two and three in the deferral agreements should be amended or deleted. He would also like these references removed from those agreements already in place and running in the chain of title.

- Ken Rohde stated that he has lived in Kristmont Acres for 16 years and expressed opposition to sidewalks and streetlights being installed in the neighborhood.

In answer to Council Member Hansen, Mr. Prima estimated that deferral agreements are enforced once or twice a year.

- Eileen Tiede stated that she has been a resident of Kristmont Acres since 1959 and voiced opposition to the installation of sidewalks and streetlights. She recalled having spoken twice before to Council on this subject, the last time being in the 1980s.

Mayor Hitchcock noted that Council received two blue sheet communications related to this item from residents opposed to the streetlights and sidewalks (filed).

- Russ Munson stated that his mother has lived on La Vida Drive for 50 years. As a possible solution to resident's concerns, he asked Council if it could void all the deferral agreements in Kristmont Acres.

Mr. Hays advised against Mr. Munson's suggestion, noting that it would create disparate treatment. He explained that if the Kristmont Acres deferral agreements were voided there would be no basis to burden others with the agreements.

Addressing Mr. Hays, Mayor Hitchcock clarified that Council is seeking a change in the deferral agreement language so that it does not violate people's right to free speech.

Council Member Beckman suggested that the clause be eliminated that addresses lighting districts, since it is no longer the City's policy to create them.

Mr. Hays responded that the City's current street lighting program may not apply to industrial areas, to which Mr. Beckman then recommended that the clause be eliminated only for residential property.

In answer to Council Member Hansen, Mr. Vallow estimated that the street lighting program would be completed in 2006-07. Mr. Hansen recommended that the topic of amending the language in the deferral agreements be scheduled for a future Council meeting.

Mayor Hitchcock agreed with Mr. Hansen and further suggested that Mr. Prima and Mr. Vallow prepare a proposal for Council's consideration and notify the residents of Kristmont Acres when this matter is scheduled to appear on a Council agenda.

Council Member Land recommended that the words "hereby waives objection to the creation of such streetlight district" be changed to "owner shall participate in the streetlight district if formed." He preferred that Council direct the City Manager to instruct staff to review this matter and bring back a recommendation. He suggested that the deferral agreement topic be discussed at a Shirtsleeve Session.

MOTION / VOTE:

There was no Council action taken on this matter.

RECESS

At 8:38 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 8:50 p.m.



I. REGULAR CALENDAR (Continued)

- I-3 "Discuss Almond North residential development per Council's request at the October 1, 2003 meeting"

Deputy City Manager Keeter noted that Council received a blue sheet on this item related to traffic volume (filed). She commented that this item appears on the agenda at Council's request made on October 1.

Community Development Director Bartlam reported that the property for Almond North was brought into the City in 1992 along with the property south of Almond Drive. In 2001, the property owner for three parcels adjacent to Stockton Street brought forward a proposal (absent the Ruhl property), which was part of the original project now in construction under the KB Home development. In May 2003 Jeffery Kirst of Tokay Development brought forward a proposal to develop the old Ruhl property, which he had purchased. Mr. Kirst's proposal would develop lots from Almond Drive to the north and is for 34 allocations, six of which are duplex units on the corner lots. On September 24, the Planning Commission voted to approve Mr. Kirst's development project.

Mr. Bartlam explained that the development plan approval process has been in place in the City since 1991. The growth management development plan is under the jurisdiction of the Planning Commission and does not come before the Council for approval. Regarding the previous assertion that groundwater contamination occurred on this property, Mr. Bartlam reported that the 1993 Concord development assessment did not find any contamination. The assessment did note that fuel tanks existed, as it was agricultural property. An above-ground fuel tank existed on the Ruhl property up until the time of Mr. Kirst's purchase. Staff recently inspected the property and found no visible sign of contamination.

Mr. Bartlam reported that the City has allowed, by right of the R-2 zone, duplexes on corner lots dating back to 1965. He stated that Mr. Kirst's proposal is allowed and encouraged as a process of making better utilization of land.

Public Works Director Prima stated that Almond Drive is a minor collector street with approximately 4,000 vehicles per day. Because of the changes in the median on Kettleman Lane at Academy Street and the addition of two new accesses with the KB Home project, there is no way to know how traffic is going to redistribute. He did not believe that traffic on Almond Drive would change significantly due to the projects or the connection of Cherrywood Way. He reported the following traffic counts:

- Academy Street (just south of Kettleman Lane) – 1,100 cars per day;
- Coventry Way – 1,400 per day; and
- Stockton Street – 10,200 per day.

Mr. Prima reported that a speed survey was conducted for nearly a week, which found that the 85<sup>th</sup> percentile is 35 mph. The speed limit on Almond Drive is 30 mph. The accident rate is slightly above the average.

PUBLIC COMMENTS:

- James Waitley reported that at the east end of Almond Drive there are three apartment complexes totaling 108 units, a mobile home park with 98 units, a 153 condominium complex, and a planned unit development with 26 homes. In addition, the area has four duplexes and 30 single homes. Almond Drive is approximately a half mile long from Stockton Street to Cherokee Lane. Traffic enters Almond Drive from Songbird Place, Coventry Way, Blackbird Place, and Stockton Street. The City now wants to add Cherrywood Way with over 100 homes, which will produce 1,000 trips a day out of the new subdivision. The Grapeline route also runs down Almond Drive. Cars that travel in and out of the Noma Ranch subdivision, Almond North, and the new KB Homes subdivision will ingress and egress from Coventry Way, Blackbird Place, and Elgin

Avenue. He stated that Community Development Director Bartlam led the Planning Commission to believe that all vehicles would have to use Coventry Way to get in and out if they did not have Cherrywood Way. He stated that at the Planning Commission meeting staff neglected to show the Commission the full picture of KB Homes and the Almond North subdivision tied together. He pointed out that there are only two lots between Blackbird Place and Cherrywood Way. He reported that when Mrs. Ruhl was asked by his two neighbors about the future of the subdivision, she called her lawyer who stated that the subdivision plan would still have the wall facing Almond Drive and a cul-de-sac. The Planning Commission has now approved a plan that includes duplexes on the corner of Cherrywood Way that connects to Almond Drive. He believed that the existing homes surrounding the project should receive the highest consideration by the City.

In reply to Council Member Land, Mr. Waitley explained that he spoke at the Planning Commission meeting and left following the Commission's vote. He had not noticed the appeal instructions at the bottom of the agenda and was told by another member of the public that he could appeal the Commission's decision to the Council.

Mr. Bartlam described the Planning Commission public hearing process and stated that typically the Chair identifies the appeal process that exists. He read the following statement that appears on Planning Commission agendas:

*If you disagree with the decision of the Commission you have a right of appeal. Only persons who participated in the review process by submitting written or oral testimony or by attending the public hearing may appeal. Make your appeal to the City Clerk at 221 W. Pine Street, Lodi, during business hours. Staff will assist you in making your appeal. There is an appeal fee of \$250. Appeals of decisions made by the Commission must be made within five days.*

Mr. Waitley noted that of the five days possible to file an appeal, two of the days were on the weekend. He felt that the time period should be five business days.

- Nancy Waitley reported that Mr. Kirst has never communicated with any of the residents surrounding his project. She felt that the traffic count reported by staff was inaccurate because it was done after KB Homes had started construction and traffic had decreased. In addition, the vehicle counter was placed on the west side of Coventry so everyone coming out of the subdivision off Songbird Place traveling west past her home was not counted. She stated that it is very difficult to get out of her driveway now and it will worsen when Cherrywood Way opens onto Almond Drive. Ms. Waitley believed that there were too many outlets onto Almond Drive currently and she expressed safety concerns. She recalled that on November 19 she received a notice regarding the Planning Commission meeting. Her husband went to City Hall seeking information about the meeting and was given a copy of the plat map (exhibit B filed) by City Planner J.D. Hightower. Her husband was not provided a copy of the staff report that had been completed on September 17.

Ms. Waitley recalled that in October 2001 there was a meeting that residents were not notified about. In March 2002, she had noticed that dirt was being dumped in the area and called the Community Development Department to inquire about what was going on. She stated that Mr. Bartlam had thought the residents received notification; however, after checking his records he discovered that they had not. Mr. Bartlam sent her the April Planning Commission packet, which included a map (exhibit A filed) that shows a brick wall across Almond Drive. On May 20, Mr. Kirst filed his plan, and on July 11, Mr. Hightower signed off on the plan. She stated that even though Mr. Bartlam knew the residents were expecting the brick wall, they were not informed of the change in plans until September 19. Ms. Waitley felt that the \$250 appeal fee should be paid by the developer, not the person trying to defend their home.

Council Member Land referenced an accident report going back to 2000 and noted that there has been only one accident on Songbird Place and no deaths on either Songbird Place or Coventry Way. The traffic volume report indicates that Almond Drive would end up with less traffic once the project is completed.

Council Member Hansen asked Ms. Waitley if she was shown exhibit D (filed) at the Planning Commission meeting, which she stated she had not. Mr. Bartlam noted that the Planning Commission had exhibit B. Ms. Waitley reported that she submitted exhibit A to the Planning Commissioners at the meeting. Mr. Bartlam responded that exhibit A is another project and has no bearing on Mr. Kirst's proposal.

- Curtis Jenkins recalled that when the area was first being developed they had planned to put in duplexes and apartments. He waited until 1:00 a.m. for an opportunity to speak to Council about the matter; however, it was adjourned to the next day, at which he spoke in opposition to the project at 12:30 p.m. At that time Mr. Schroeder, former Community Development Director, stated that there would be nothing except single-family dwellings; no duplexes or apartments would be built. Mr. Waitley stated that Noma Ranch has duplexes with a large number of occupants, inoperable vehicles, fighting, damage to property, etc.
- Patricia Davis voiced opposition to duplexes due to the poor behavior of the tenants. She expressed concern for the safety of her four children. She asked Council not to approve the construction of more duplexes in the area and that more exits be designed so that traffic is not all flowing onto Almond Drive.
- Paul Inman asked Mr. Prima when the speed survey was conducted, to which he replied the week of October 4 to 10. Mr. Inman reported that during that time there was a manhole roped off that was eight by six feet wide, which impacted the speed of vehicles significantly. Mr. Inman stated that he attended the Planning Commission meeting and did not recall anything being announced about the right to appeal. He characterized Almond Drive as a "launching pad" for those traveling west to Highway 99 and a "landing zone" for travelers driving east after having exited the highway. He asked Council to approve the original plan that was promised, which included the brick wall and cul-de-sac, rather than opening up another street onto Almond Drive.
- Jeffery Kirst introduced himself as President of Tokay Development, managing member of Almond North LLC, and owner of the property. He recalled being asked if he had seen an approved map for the property in 2000 and he replied that he saw no approved map for the Ruhl property. He was asked at the Planning Commission meeting how he would feel about having a cul-de-sac, to which he responded that it was not his preference; however, it was up to the Commission to make that determination. He felt that the comments made tonight regarding duplexes relate to a property management issue, not a land use issue. He noted that housing has become expensive in Lodi and one way to try to make it more effective is to have more units. He read the following letter from the California Association of Realtors into the record (filed):

*Dear Mr. Kirst: In a continuing and demonstrated successful effort to expand housing supply and increase housing affordability, the California Association of Realtors will co-sponsor a new series of housing bills before the California Legislature next year. One of those housing issues is of interest to your community. Building on the commitment of many local governments to encourage housing, we will co-sponsor a bill with all of the housing advocates to permit developers of new single-family housing subdivisions to place duplex units on corner lots. The City of Sacramento and the County of Sacramento are two nearby governments that have implemented this proposal. Property owners are quite pleased with the results. Sincerely, Ronald M. Kingston*

Mr. Kirst emphasized that there is a need for more housing in the community. He outlined that he had come to the City, made an application, paid fees, worked with staff, came up with a plan that he was told was good planning practice and use of housing units, had a public hearing before the Planning Commission who approved his project, and no appeals were filed. He expressed confusion as to why the matter is now being considered by Council.

In reply to Council Member Hansen, Mr. Kirst estimated that rent for the duplexes would be between \$1,000 to \$1,200 a month.

Mayor Hitchcock expressed concern about the number of streets coming out onto Almond Drive in such close proximity. She noted that traffic speed is high on Almond Drive and felt that an unsafe condition was being created. She felt that a cul-de-sac would be better at the location. Ms. Hitchcock stated that she asked City Clerk Blackston to research other appeal processes in the City and her report indicated that many other appeal periods are much longer than five days and some specify business days. She suggested that Council review the Planning Commission appeal process and consider amending the time period. Being that the appeal deadline has now lapsed for the Planning Commission decision related to the Kirst proposal she suggested that it could be considered in terms of allocations. Ms. Hitchcock stated that she probably would not want to approve the allocations based upon the problems with the circulation as she perceived them.

Mayor Pro Tempore Howard expressed her opinion that by even considering a change in design tonight, Council is not respecting the appeal process that is valid and legal. She suggested that at a future date Council may want to consider a change in the appeal process to make it more user friendly and perhaps change the language specifying the time period to five business days.

Council Member Beckman noted that the developer has complied with the City's regulations and it would be unfair to renege on the stated process. He expressed support for extending the five-day appeal period and suggested that it be changed to either ten calendar days or five business days. He asked Mr. Bartlam to report back to Council regarding whether the \$250 fee is associated with a specific cost to the City.

Council Member Hansen voiced opposition to the Mayor's suggestion of limiting the number of allocations in an effort to encourage the developer to build a cul-de-sac. He agreed with other Council comments that five days is too short a period to allow for filing an appeal.

Mayor Hitchcock clarified that Council can base its approval of allocations on the plan, circulation, information that public brings forward, etc.

City Attorney Hays reiterated that by right, in R-2 zones, duplexes can be constructed on corner lots. If Council wanted to change that policy, it would have to effectuate a zone change on the property. He advised Council that it is not empowered to alter the approved plan because the appeal process has expired. Based upon the record that has been established this evening, he suggested that if Council attempts to do indirectly, what it cannot do directly, i.e. redesign the subdivision, it could be considered an abuse of Council's discretion.

MOTION / VOTE:

There was no Council action taken on this matter.

ACTION TO CARRY OVER AGENDA ITEMS

The City Council, on motion of Mayor Hitchcock, Land second, unanimously voted to carry over the following items to a future City Council meeting:

- I-5
- I-7
- I-8
- E-15
- K-1

I- REGULAR CALENDAR (Continued)

- I-4 "Adopt resolution affirming the recommendation of the Planning Commission to approve the Residential Growth Management Allocation Plan for the Calendar Year 2003 totaling 415 units, including 209 low-density allocations and 206 medium-density allocations, pursuant to Chapter 15.34 of the City of Lodi Municipal Code"

Community Development Director Bartlam explained that this is the annual allocation of residential units. The City's growth management allocation program is based on a maximum population growth of 2% per year. This year, based upon the 2% figure, there are 437 total units that could be allocated out of the 2003 schedule. There are fewer requests for allocations than what the City has to offer. As a result of tonight's recommendation there will be further carry over of units. Units are broken down into three density categories, i.e. low, medium, and high. There are 1,427 units in the low density with 209 units being requested. There are 424 medium-density units currently available, with 206 being requested. There are no high-density requests being made, which leaves a balance of 1,550.

Mr. Bartlam reviewed the following projects:

Low Density

1. Almond North project – 34 units.
2. Kirst subdivision – 6 units subdivided off the back side of a single-family residence facing Harney Lane.
3. Legacy Estates, Unit 2 – 141 units; this is the extension of what began as the Lucky property, southwest Lodi at Harney Lane and Sunnyside Estates. It is proposed by Frontiers development and will close the gap between the prior project and Mills Avenue.
4. Millsbridge, Unit 2 – 28 units; this is an infill project on the back portion of the Nakamura property.

Medium Density

1. Mills Avenue Townhomes – 12 units proposed by Mitch Scheflo.
2. Wine and Roses – 31 units; combination of small lots single-family detached units, executive suites or long-term stay units proposed by Russ Munson.
3. Lalazar Estates – 9 units; this is an infill project on Lakeshore Drive with three single-family detached units and six duplex units.
4. Neuschaffer – 154 units; this property is ten acres on the corner of Harney and Kettleman Lanes and will contain approximately 15 units per acre.

Mr. Bartlam reported that the Planning Commission held a public hearing on September 24. Council is asked to affirm the recommendation of the Commission to approve a Residential Growth Management Allocation Plan for 2003 totaling 415 units. Mr. Bartlam pointed out that a reduction in allocations for the Kirst project would not necessarily guarantee a cul-de-sac design or reduction in duplex units.

Mayor Hitchcock explained that due to her concern regarding the circulation and numerous streets opening onto Almond Drive she would be voting against the Almond North allocation request and asked that it be voted on separately.

MOTION #1 / VOTE:

The City Council, on motion of Council Member Land, Beckman second, unanimously adopted Resolution No. 2003-196 affirming the recommendation of the Planning Commission to approve the Residential Growth Management Allocation Plan, with the exception of the Almond North Subdivision, for Calendar Year 2003 totaling 381 units, including 175 low-density allocations and 206 medium-density allocations, pursuant to Chapter 15.34 of the City of Lodi Municipal Code.

MOTION #2 / VOTE:

The City Council, on motion of Council Member Land, Beckman second, adopted Resolution No. 2003-197 affirming the recommendation of the Planning Commission to approve the Residential Growth Management Allocation for Almond North Subdivision for Calendar Year 2003 totaling 34 low-density units pursuant to Chapter 15.34 of the City of Lodi Municipal Code. The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – Mayor Hitchcock

Absent: Council Members – None

- I-5 “Adopt resolution authorizing the City Manager to create a new contract between the City of Lodi and Cottage Bakery that will transition this customer to a standard electric rate over a three-year period” was ***pulled from the agenda and carried over to a future City Council meeting agenda.***

- I-6 “Receive Downtown Lodi Business Partnership 2003-04 Annual Report, adopt Resolution of Intent to Levy Annual Assessment, and set public hearing for November 19, 2003”

Deputy City Manager Keeter noted that Council received blue sheets on this item listing the benefit fee schedule and Business Improvement Area map (filed). She explained that this evening Council is asked to receive the report, adopt the resolution of intent to levy the annual assessment, and set the public hearing for November 19.

In reply to Mayor Hitchcock, City Attorney Hays explained that the assessments and structure can be discussed at the public hearing.

PUBLIC COMMENTS:

- Peter Westbrook, President of the Downtown Lodi Business Partnership (DLBP), introduced new Executive Director, Pamela Hayn. He explained that a majority vote of the business owners in the Business Improvement Area (BIA) would be needed before changes to the assessment can be made. He anticipated discussing the matter next year with a vote taken by the membership the following year. He reported that \$30,000 is collected in assessments annually. It costs \$10,000 a year to take down and replace the street tree lighting, which must be done due to the growth of the trees. The DLBP plans to put the banner program in place over the next three years. Signage is needed for the parking garage and throughout the City directing visitors to the downtown area. The DLBP consists of an 11-member volunteer board and has two paid staff members, Executive Director Pamela Hayn and Angie Nicholas, who is the new business manager of the office. He noted that past Executive Director Lew VanBuskirk did a wonderful job for the DLBP.

Council Member Hansen suggested that the DLBP develop an adopt-a-tree program for the downtown area to help cover the lighting cost.

Mr. Westbrook recommended that Shirtsleeve Sessions with DLBP take place two or three times a year. He suggested that the DLBP, Lodi Conference and Visitor Bureau, and the Chamber of Commerce be funded from the Transient Occupancy Tax.

Mayor Hitchcock supported Mr. Hansen's recommendation for an adopt-a-tree program. She noted that there has been concern expressed from business owners in the BIA about who has the right to approve spending.

Mr. Westbrook replied that opposition within the DLBP is generally less than 5% and comes from those who are not paying their assessments. He noted that profits from last year's Farmers Market totaled \$5,000 and this year they anticipate \$20,000.

Mayor Hitchcock asked City Attorney Hays to review the ordinance and determine whether the City has the responsibility for approving expenditures of the DLBP.

- Ms. Hayn stated that she looked forward to working with Council in the future.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, unanimously received the Downtown Lodi Business Partnership 2003-04 Annual Report, adopted Resolution of Intent No. 2003-198 to Levy Annual Assessment, and set public hearing for November 19, 2003.

- I-7 "Adopt resolution authorizing the replacement purchase of the Electric Utility voice recording system and appropriate funding (\$17,950)" was ***pulled from the agenda and carried over to a future City Council meeting agenda.***
- I-8 "Adopt resolution approving the reallocation of Electrical Engineer (vacant position) to Senior Power Engineer along with the new job specification and salary range" was ***pulled from the agenda and carried over to a future City Council meeting agenda.***

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Council Member Land, Beckman second, unanimously voted to continue with the remainder of the meeting following the 11:00 p.m. hour.

I. REGULAR CALENDAR (Continued)

- I-9 "Adopt resolution approving salary and benefits for clerical Confidential designated employees"

Deputy City Manager Keeter noted that Council received a blue sheet amending the resolution on this item (filed). Human Resources is recommending that employees be responsible for a share of the cost of their medical premiums. Council is asked to approve salary adjustments and benefits as outlined in the resolution. She pointed out that the staff report indicated that the cost would be \$23,148, which is included in the budget; however, after the employee contribution toward medical premiums is netted out, the actual cost is \$19,620.

MOTION / VOTE:

The City Council, on motion of Mayor Hitchcock, Beckman second, unanimously adopted Resolution No. 2003-199 approving salary and benefits for clerical Confidential designated employees.

- I-10 "Discussion and possible action related to the PCE/TCE (Environmental Abatement Program) additional opinion matter"

Mayor Hitchcock reported that she and Council Member Hansen have made a number of contacts and have found that the recommendation to utilize the services of a headhunter firm would probably not be the best way to proceed. There are a limited number of firms that would be qualified and not have a conflict of interest. Consequently, the direction she and Mr. Hansen are taking is to consider firms that are recommended to them.

Council Member Hansen stated that he spoke with a representative of Lehman Brothers today who indicated that they are still debating whether or not they will participate in a presentation at a City Council meeting, as has been requested. Mr. Hansen received a commitment from the representative to reply with a definitive answer.

Mayor Hitchcock noted that a special closed session meeting has been scheduled on October 27 at 4:00 p.m. for Council to meet with mediator Lester Levy.

MOTION / VOTE:

There was no Council action taken on this matter.

- E-15 "Adopt resolution approving \$50,000 loan to the Lodi Redevelopment Agency in order to fund the first of five annual payments to the Salvation Army for the development of the Hope Harbor project" was ***pulled from the agenda and carried over to a future City Council meeting agenda.***

J. ORDINANCES

None.

K. MEETING OF THE LODI REDEVELOPMENT AGENCY

- K-1 "Adopt resolution appropriating \$50,000 for the development of the Salvation Army's Hope Harbor Project" was ***pulled from the agenda and carried over to a future City Council meeting agenda.***

L. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Mayor Pro Tempore Howard stated that she and Mayor Hitchcock attended the Wine Integrity Award dinner this week, at which the Phillips family, the owners and operators of Michael-David Vineyards and Phillip's Farm, were given the award of merit. Dr. Stan Howell from Michigan State University received the 2003 Wine Integrity Award.
- Council Member Beckman announced that he recently obtained a position as a property management consultant and his first and largest client is Jim Baum.
- Council Member Hansen recommended that the City's auditors audit the billings from Envision Law to provide Council with a perspective as to whether there have been any charges that were improperly billed to the City. He asked that the topic be scheduled for a future Council meeting.  
  
Finance Director McAthie indicated that she would address the matter with the auditors and report back to Council with their response.
- Council Member Land recognized the following accomplishments in the City:
  - The new police building is beautiful, and the landscaping has now been completed.
  - He thanked the Public Works Department for the improvements on Turner Road between Church Street and Highway 99, as well as Lower Sacramento Road.
  - At the October 10 event for the eighth anniversary of East Bay Municipal Utility District the City of Lodi was applauded by the executive director for its collaboration with Woodbridge Irrigation District in the agreement to purchase surplus surface water.
  - He thanked the Parks and Recreation Department for the improvements on the west side of Lodi Lake.
  - He commended Community Development Director Bartlam for his work during the last couple of months with Loel Center in its effort to purchase and develop affordable housing for seniors.



Council Member Land reported that he and Council Member Hansen have participated in one conference call with a possible facilitator for Council's team-building session and have four more interviews to conduct. He estimated that the interviews would be completed by the end of next week, after which they would report back to Council.

- Mayor Hitchcock reminded the public that a representative from Senator Poochigian's office would be at the Carnegie Forum tomorrow from 1:00 to 4:30 p.m.

M. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

None.

N. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:46 p.m.

ATTEST:

Susan J. Blackston  
City Clerk